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Ho'i Ho'i Ka' Na' Wai: To Return, to Restore Law or Code, to Obey a Law; to Learn from Experience

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Abstract:

While U.S based contracts are written concerning the recognition and rights of Native Hawaiians, such policies often become overshadowed and undermined by private and commercial self-interest. Additionally, although such contracts are meet upon and discussed amongst State and Native Hawaiian group leaders - defense, sustainment and enactment concerning such contracts continue to be ignored, negated or questioned in their legitimacy. As an effect, both recognition and legislative steps toward resolve continuously fall under judicial scrutiny thus reverting back to token ambiguousness.

The goal of this essay is to stringently yet constructively assess the attempts made to answer for past wrongs incurred on the Native Hawaiian people and how such attempts are being applied to the present situation. As such, this writing will be: 1) A philosophical inquiry concerning recognition as both foundational and implicit concerning the formulation restorative justice. Specifically, as it pertains to mutually established intentions and commitments made by State institutions to particular groups. 2) A recovered preliminary of The Apology Resolution of 1993 and the case of State of Hawaii vs. The Office of Hawaiian Affairs (No. 07-1372). 3) The dynamics and distributive properties of restorative justice consistent with recognition-based reformative action(s) and paradigms of pragmatic resolution. 4) The ratio politica of Native Hawaiian rights and the State concerning recognition, restorative justice and resolution.

1. Introduction

The objective of this writing is to consider the principles of recognition and restorative justice concerning law's policies and fidelity to adjudicative purpose. Regarding the former, recognition provides a necessary premise that establishes law's foundation in order to properly advance political equality and dignity for all. Accordingly, our institutions become implicit with the principles and commitment to protect the integrity of the legislative and electoral processes - that is, to implement and enforce recognition by appropriate legislation. Such principles of recognition not only become normative codes concerning laws interpretation but pragmatically significant within a certain community. Regarding the latter, reformative action(s) consistent with a basic criterion of restorative justice and paradigms of pragmatic resolution create processes of shared involvement (to the extent possible) that collectively identify and address the harms, needs, and obligations for all affected persons and groups. Pragmatically, such consensus generates more robust forms of social reform in order to reconcile and provide a range of alternatives, opportunities for dialogue, negotiation, and problem solving that can lead to a greater sense of community and resolution for all involved.

Through this understanding, while the focal theme of this paper is restorative justice as it pertains to recognition, the significant overlay of this article is the Apology Resolution of 1993 (U.S Public Law 103-150¹) signed by Hawaii's State representatives, U.S. Congress and U.S President William Clinton. Significantly, this joint resolution entailed 37 "whereas" clauses of historical facts publicly recognized by the U.S Government which essentially "*acknowledges that the overthrow of the Kingdom of Hawaii occurred with the active participation of agents and citizens of the United States and further acknowledges that the Native Hawaiian people never directly relinquished to the United States their claims to their inherent sovereignty as a people over their national lands, either through the Kingdom of Hawaii or through a plebiscite or referendum.*"ⁱⁱⁱ As an effect, principles of recognition and reconciliation not only become implicit in the proper configuration of restorative justice, but necessary in law's establishment and possible intervention. Philosophically, while the issues presented concerning both recognition and restorative justice between indigenous groups and our institutions may require further analysis - it also requires to prove itself in more compelling justifications and methodologies that entail more robust forms of political veracity and truthful theory-building.

2. The Tenets of Recognition

The concept of recognition can be positioned as indispensable to both the *substance* and *measure* of a person or group's well-being and flourishing. Regarding the former (*substance*), the basis of recognition may be to recognize that the inherent dignity of all autonomous persons throughout the global community. It may even be established that a property of recognition logically positions and constitutes a person or groups' inherit sense of place in the spheres of our institutions and its shields of justice. From this view, Recognition can be said to be intrinsic to the concept of justice - and likewise, it cannot be said that the conceptual groundwork of justice presupposes the principle of recognition. Though this, established recognition becomes linked to

institutions that secure fundamental rights and laws of protection. Regarding the latter (*measure*), recognition may also be construed as an established capacity or agency. Accordingly, the measure of recognition *qua* capacity or agency may be a purposeful, or "goal orientated" endeavor - that is, an intentional designation or appointment of a specified action. From this view, the tenet of recognition with regard to both its substance and measure may become both a collective and historical dynamic. Distinguishing in such a way, we become mindful that recognition becomes implicit in a basic criterion of justice that is normative, interdependent and necessary between rational persons. Such internalization becomes a truthful identification to other persons and groups as well as a process where persons or groups construct broadly sharable values.

Conjunctively, the tenets of recognition may also implement both the constraints and guidance of sorts over one's behavior. To explain, actions that renege recognition may in turn, express *disrespect*, disparagement, or possibly an indirect harm towards a person or group when their recognition is denied or subverted. Those who are denied recognition are denied the substance or concreteness of another's existence. Particularly within a social structure, those who are denied recognition are denied the capacity of any or even all decisional involvement and thus their agency. To such effect, a person or group's rights or shields of protection are no longer recognized as important or significant. As such, when recognition is negated or denied, it can be established that such misrecognition initiates both a question of validity, and struggle for social (as well as cultural) worth.

Moreover, when institutions or its representatives renounce a person or groups' established recognition, it possibly renounces the conceptual likelihood of a normative dimension concerning social progress. It possibly reflects the idea that social "movement" can only be achieved through continuous conflict between individuals and groups about norms and values. It possibly reflects that "reclaimed recognition" is contingent in a society where its institutions or its leaders are inconsistent and unstable (or possibly illegitimate). From such reasoning, it is only if a theory recognition is able to explain when institutions produce sufficient, insufficient, or outright denial of recognition. Such that, if a theory of recognition is able to provide a definition of justice, it may provide a description of political normativity.

But with regard to institutions, how does an institution, which defines rule of law as the outcome of consensus between social agents, account for the stabilization and institutionalization of sovereign power in and of itself, or even in and for itself? For it can be established that the State itself has a recognitive structure that is imperative concerning its legitimacy - meaning, states cannot exist "theoretically" in and of themselves, nor can states have existence in abstract in and for themselves. While it may be undeniable that institutions and authorities extend the domain of private and civil recognition to the whole of society. Indeed it may be reasonably established that an institutions very existence in a state is predicated on the need to be recognized - as they represent the shared value and collective will of its citizens. Accordingly, our institutions and its appointed representatives are created and undeniably bound to protect, defend and sustain the proper recognition, rights and interests of its collective citizens. In turn, a State comprised of various institutions that produce effects of subjectivation are incompatible and profoundly defective. As such, this sort of fragmentation of can only be understood as an internalization of a fragmented society.

Through this understanding, recognition is not only the internalization of social roles, but an externalized position to transform institutions, its leaders and the society that empowers it. To such understanding, the theory of recognition is not only a way of making political normativity explicit, it is also a way of describing what is political in identities and how socialization leads behaviors not only to social reproduction but also to social transformation. As such, recognition becomes a cohesive force that drives these transactions of dialogue and consensus into a unification of different aspects into a coherent dialogue that works to protect, defend and truthfully elaborate broadly shareable values. As such, recognition is the right to self-empowerment, and self-realization. But most importantly, without recognition - *Justice* (in its numerous forms) remains a hollow concept.

3. Recovered Preliminary

3.1. Time Line

- **1893-** The Kingdom of Hawaii was illegally overthrown by John L. Stevens (U.S Minister), the U.S Navy, U.S sugar planters, U.S descendants of missionaries, and financiers.
- **1894-** The Republic of Hawaii was established with Sanford B. Dole as the self- appointed president.
- **1898-** Hawaii is non-consensually annexed as a territory of the United States by U.S President William McKinley.
- **1959-** Without Native Hawaiian consent, U.S Congress passes the Hawaii Statehood Admissions Act - Hawaii becomes the 50th State. U.S Congress also returns 1.2 million acres of ceded land to the State of Hawaii to be held in trust for Native Hawaiians.
- **1978-** The Office of Hawaiian Affairs, a State institution is established by the Hawaii State Constitutional Convention in order to recognize and reconcile past wrongs toward Native Hawaiians since the Illegal Overthrow of 1893.
- **1993-** U.S President William Clinton signs the U.S Public Law 103-150 that: 1) provides federal recognition to 37 historical clauses describing the Illegal Overthrow of 1893; 2) urges support for reconciliation efforts between the United States and the Native Hawaiian people.

On January 17, 1993, U.S President William Clinton signed U.S Public Law 103-150ⁱⁱⁱ, also known as the Apology Resolution formally stating that prior to 1893, the United States "recognized the independence of the Kingdom of Hawaii, extended full and complete diplomatic recognition to the Hawaiian Government, and entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1887;"^{iv} Until January 14, 1893, John L. Stevens, the United States Minister with a small group of non-Hawaiian residents, including citizens of the United States, unlawfully overthrew the Kingdom of Hawaii. "Whereas, "in pursuance of the conspiracy to overthrow the Government of Hawaii, the United States Minister and the naval representatives of the United States caused armed naval forces of the United States to invade

the sovereign Hawaiian nation on January 16, 1893, and to position themselves near the Hawaiian Government buildings and the Iolani Palace to intimidate Queen Liliuokalani and her Government; "Whereas, on the afternoon of January 17, 1893, a Committee of Safety that represented the American and European sugar planters, descendants of missionaries, and financiers deposed the Hawaiian monarchy and proclaimed the establishment of a Provisional Government."^{vi}

The Provisional Government formed by the conspirators directly violated the treaties between the two nations and of international law; moreover, without the active support of the United States military, insurrection against the Hawaiian Kingdom would have failed for lack of popular support. "*The indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people over their national lands to the United States, either through their monarchy or through a plebiscite or referendum.*"^{vii} Although U.S President Grover Cleveland protested the insurrection and called for restoration of the monarchy, the Provisional Government continued its ruling power and pursued annexation to the United States. In Section one of U.S Public Law 103-150 Section 1: titled Acknowledgement and Apology, the U.S Congress: "*(1) acknowledges the historical significance of this event which resulted in the suppression of the inherent sovereignty of the Native Hawaiian people; (2) recognizes and commends efforts of reconciliation initiated by the State of Hawaii and the United Church of Christ with Native Hawaiians; (3) apologizes to Native Hawaiians ...for the overthrow of the Kingdom of Hawaii on January 17, 1893... and the deprivation of the rights of Native Hawaiians to self-determination; (4) expresses its commitment to acknowledge the ramifications of the overthrow... in order to provide a proper foundation for reconciliation between the United States and the Native Hawaiian people; and (5) urges the President of the United States to also acknowledge the ramifications of the overthrow...and to support reconciliation efforts between the United States and the Native Hawaiian people.*"^{viii} However, nothing in this Joint Resolution is intended to serve as a settlement of any claims against the United States.

Currently, in the State of Hawaii v. The Office of Hawaiian Affairs (No. 07-1372): The issues in this case are 1) Competing claims to 1.2 million acres of state ceded land (29% of the State's total land area) and 2) The duty owed to Native Hawaiians by the State to maintain the land held in trust and be utilized for specific purposes. In antecedence - when Hawaii became the Union's fiftieth state in 1959, the federal government gave the State title to 1.2 million acres of the ceded land. Through the Hawaii Admission Act, all ceded land was to be held in trust and used exclusively for the benefit of Native Hawaiians that entails: 1) the establishment and support of public schools and 2) the promotion of Native Hawaiian homeownership through homestead. In 1978, the Office of Hawaiian Affairs (OHA) was established through Hawaii's State Constitutional Convention in "*an effort to right the wrongs done towards Native Hawaiians since the overthrow of the Kingdom of Hawaii in 1893.*"^{ix} Additionally, the agency was also designated to receive and manage a portion of the funds derived from the ceded lands. Consecutively, the central lining of this case is the Apology Resolution of 1993 (U.S Public Law 103-150^x) signed both by Hawaii's State Legislature, the U.S. Congress and U.S President William Clinton issuing a formal apology that officially recognizes the monarchy's illegal overthrow, and urging Congress to support further attempts to reconcile the past injustices incurred on the Native Hawaiian people.

This case arose when the State sought to develop and sell a 500-acre parcel of ceded land in West Maui, called the "*Leiali'i parcel,*" to private investors. However, through the signing of the 1993 Apology Bill, negotiations between the State and Office of Hawaiian Affairs concerning the sale stopped; the Office of Hawaiian Affairs demanded that the transfer of the Leiali'i parcel include a disclaimer stating that transference does not waive or diminish Native Hawaiian claims to ownership of the parcel. However, the State ignored the requested disclaimer, went on to process the business transaction, and sold the 500 acre parcel; in turn, the State attempted to pay the Office of Hawaiian Affairs \$5,573,604.40 - roughly 20% of the fair market value; the Office of Hawaiian Affairs refused to accept the check and instead (along with several other individual plaintiffs) filed suit in Hawaii State Court, seeking (1) an injunction prohibiting the State from selling any more ceded land; (2) an injunction barring the sale of the Leiali'i parcel specifically declaring that any sale of the ceded lands would violate the state constitution and the 1959 Federal Admission Act. The trial court denied relief on: waiver, collateral estoppel, sovereign immunity, and the political question doctrine. The court held that the State had express authority to alienate and sell any parcel of ceded land from the public trust.

On appeal, Hawaii's State Supreme Court overturned the ruling barring the State from selling 1.2 million acres of ceded lands seized until both the State, and federal government reach a political settlement with Native Hawaiians (represented through the Office of Hawaiian Affairs). The court ruled that the Apology Resolution of 1993 induced congressional recognition "*that Native Hawaiians have unrelinquished claims over the ceded land [that] "contemplate[d] future reconciliation"* thus creating a fiduciary duty by the State to preserve the land until unresolved claims have been settled. Lingle and the State Attorney General went on to appeal. On appeal in March 31, 2009, the U.S Supreme Court reversed Hawaii State Supreme Court's holding. Judge Alito ruled that the Apology Resolution of 1993 does not "strip" the State of its authority to sell the lands granted to the State when it was admitted into the Union. Although, the 37 "whereas" clauses that preface the Apology Resolution, make various observations about Hawaii's history, it does not serve as a "*congressional recognition of Native Hawaiians' unrelinquished claims to the land.*"^{xi} Rather, the Hawaii State Supreme Court's reading of the Apology Resolution of 1993 would ultimately annul the 1959 Federal Admission Act^{xii}, raising grave constitutional concerns if it were "*to cloud Hawaii's title to its sovereign land after Hawaii was granted statehood.*"^{xiii} As an effect, the U.S Supreme Court remanded the case for "further review" in light of its interpretation of the Apology Resolution.

4. The Dynamics of Restorative Justice

The dynamics and adjudication of restorative justice, particularly in the appropriation of recognition, consists upon the meeting and mutual consent of institution's leaders, representatives, lawyers and judges to either deny or endorse the claim about a specific injustice done to a person or group. Otherwise, there can be no genuine agreement or disagreement about the claim of injustice or its restorative platform. As such, in order to establish mutual concurrence - identification of inherit semantic premises and the

action(s) at hand must be brought to surface. This "pre-interpretive stage" - particularly its *clarification* becomes paramount because it not only establishes the rights, duties and obligations concerning rectification, but it also establishes the demand for further elaboration of law's interpretation, extension of policy writing and juridical adjudication. Moreover, such "pre-interpretive stages" may also set precedence for the methods and processes of conflict resolution (and possible humanitarian intervention if necessary). Thus, in the interpretive stage concerning restorative justice, those involved in law's establishment and processes indispensably develop a complex interpretive attitude toward law in accordance to two fundamental components: 1) Postulation that the process of constructing and establishing law of resolution, nor its "amending power" does not superficially exist. But rather, has value that serves a particular purpose or enforces some principle. 2) Agreement that such restorative law requires a specified behavior or judgment that must be adhered, in order for law to not assume a token or mechanical role. Essentially, this decides not only what sort of restorative law exists, but what must be enacted or insisted by necessity in order to perpetuate law's adjudicative value and content.

Conjointly, the interpretive attitude concerning the prescriptive design of restorative justice entails: 1) a recognized historical stage concerning the determination and development of its interpretation, 2) its establishment of resolution policy as well as 3) consistency of its normative progression concerning law's paradigms and its commitments. As an effect, the role of these paradigms and established commitments will produce both perfunctory reasoning and concrete archetypes for which law's interpretation (as well as its constraints) must appropriate; in turn, any argument against the interpretation must take the like form as well. For such reason, when we participate in the concept of duty, obligation and specific history, we assume the interpretive position concerning the justifications, establishment and mandate of law in the name of restorative justice. In this, social, cultural, as well as collective practice creates a crucial distinction and recognition of a right in order to treat law's establishment as assertions of value and content rather than "hollow rhetoric." In turn, such distinctions and recognition become utilized in order to correctly interpret what restorative justice and law really requires. Accordingly, as the interpretive attitude of restorative justice develops - people begin to demand, under the title of that specified value or content of purpose, that such specifications be upheld to the fullest extent.

From this reasoning, when re-modified or non-contextual information is posed, interpretation may inaptly revert back to a "speculative practice" thus drastically altering law's value and content as well as its methods of enacted practice. For example, when people's view on what constitutes "respect" changes - opinions change about the nature of "respect" as well as its opposing view; this in turn changes the dynamics of what constitutes "respect," or whether "respect" even has any value or content in the primary position. Consecutively, people will begin to perceive "respect" from an inverted view contrary to its original point; as an effect, "respect" becomes an obscure and impersonal value. This in turn, situates "respect" in a different and diminished place in our social and community structure making the interpretive attitude and language of respect completely languished; so languished that the original practice of "respect" deteriorates into a token or injudicious state. Hence, law's interpretation (as well as its examination of processes and methodologies) must indispensably provide clear, pragmatic and applicative structure conducive to its intended resolve. In turn, by way of its established virtue, value and content - restorative law is compellingly advocated, endorsed and defended with strong support.

Through this, restorative justice may also entail an "amending power," as such fairness may serve as a commitment to understanding the needs and vulnerabilities of others in attempt to rebuild a respect for those affected. Policy analysis concerning the "rectifying power" of restorative justice becomes significant as it examines the processes and methodologies used and extended in law's development. Through such accord, we must also examine how its *modus operandi* can be construed as a meaningful acknowledgement to proper processes and outcomes. As such, an examination of the history of attempts and processes to address the concern becomes crucial when we elaborate on the meaning, policy and law concerning restorative justice. To such effect, certain methodological questions may be posed, such as: Could the offense have been avoided? Is it a "repeated" offense caused by a consistent influence, or did it branch out to other offenses that involved other offenders? Such examination becomes significant in order to understand and effectively address the underlying problem in order to render a chain(s) of accountability. Were there policies already established in the past to address and resolve these past injustices? Was there a proper representation of the injustice committed? As accurate statements and admission (or even omission) of injustice becomes paramount concerning the appropriate extent of both responsibility and accountability. Through such discernment, we may begin to pragmatically, rather than ambiguously (or even vainly) rectify the situation (or even potential "offshoots" of a complex situation) in order to avoid direct or even indirect wrong doings in the future. This may emphatically involve a process of prevention or commitment to "not repeating mistakes." Accordingly, such prevention provides a "closure" to not only the conflict or wrong doing, but it establishes a standard of constraints. Such that, if the conflict or wrong doing is recurrent (or even continuously repeated), then retributive sanctions to the offense may be justified and authoritatively enacted. Meaning, if a person or group continue the offense (or even its relative off-shoots), one may have to say, perhaps regrettably, "I can't in good conscience give you another opportunity to continue your offense..." no matter how much the person or group continues to acknowledge their error. Such methods and processes have the potential to build relationships and recover parts of the current justice system that can lead to further problems. It is a restorative response to the circumstances of wrongdoing that allows each situation to be considered individually within a normative procedural context concerning long-term policy. Accordingly, past attempts that may have been unsuccessful can be corrected, amended or even overturned for a more robust form of "amending power."

Sometimes in "hard cases," whereas, there may be a disagreement of sorts concerning the adjudication of restorative justice - the extended issue is now: how far must the interpretation be faithful to the historic intention, and how far must we accept such specific terms of requirement. For although history, paradigms and commitment anchor interpretations - paradigms must also remain open to challenge by novel construal(s). Intrinsically, if in any case, the government may act to curtail law's establishment with some compelling reason - it must indispensably entail summaries consistent with the factors upon which the original law and

its interpretation was based upon. It is not an issue that government may override any law necessary to protect the rights of others, prevent catastrophe, or even obtain a "clear and majoritive public benefit." However, if the "clear and majoritive public benefit" serves as the base of such reasoning - the overturn would tread the semantic and fundamental groundwork such as: 1) the gradation of initial consensus; 2) the conjoint resolutions articulated; 3) the reformative platform endorsed; 4) the postulate of process; 5) the postulate of application; 6) the value of restorative justice, 7) the content and point(s) of history as they agreeably occurred to warrant restorative justice. Given this, re-justification of overturning the overall interpretation and establishment of restorative justice on such claims would also prevaricate that the claim of injustice and restorative processes were essentially pointless: how it was perceived; how it was postulated; how it was agreed; how it was established and how it was valued as necessary for both political and social cohesiveness. Accordingly, the dynamics of restorative justice is fundamentally a response to injustice - that respects the dignity and equality of each person in order to build understanding and promote social cohesion through the careful contribution and participation of all that are affected. By giving affected persons or particular groups a voice and the opportunity to consider what they and others need to reconcile the consequences of wrongdoing, they are given the opportunity to learn and to improve their circumstances. To such understanding, fundamental procedural safeguards should be applied to the principles of conflict resolution and in particular - to the restorative processes. Such principles may be used to construct a benchmark of restorative justice in order to effectively regulate standards of accountability and fairness in the adjudicative process.

In this and through this, law's fidelity concerning restorative justice entails an outlay of its extension. As there was something distinctive and exceptional about its substance - such substance is a restitution legitimately warranted to protect the original recognition, rights and law created by way of its necessity. If law's interpretation and establishment stands upon the conviction that such grave injustice(s) of the past are worth remedial actions in order to prevent its continuation or resurface, then such convictions of justice must be carried out. If government must retribute for its errors against the individual or particular group inflicted upon their own reckoning, then laws institution must maintain its responsibility and honor its extension of restorative justice - no less. Otherwise, government's failure to extend law's semantic interpretation and execution will only display that law's identification, and acknowledgement of injustices concerning the original case is a complete and utter sham, or may keep only if it's "convenient" to be upheld. Or, restorative processes may legitimately become further elaborated by way of *retributive* justice. As such, if we allow speculation to support the "justification of emergency" or "defined benefit," then we've blatantly trounced the broadly sharable interpretation, fidelity and overall essential form of restorative justice.

As such, the essential purpose and function of restorative justice is to encourage an intention of mutual respect and resolution whenever conflict arises within our community. By stating and endorsing a proper acceptance of restorative processes, we state its understanding of the issue under inquiry and will distribute forms of resolution in its proper form. Additionally, in keeping with the fidelity of restorative justice, we properly recognize persons and groups that formulate proper understanding, cooperation and cohesiveness in our institutional procedures. In turn, for all involved, such restorative processes sow a closure of historical injustices in order to reap a deeper sense of community, good faith and unity of State. Through this, an important part of restorative justice is a commitment to finding diverse ways to work with conflict. While conflicts may (or will) inevitably arise within the community: However, the health of our community is not measured by the presence or absence of conflict as much as by our willingness to find effective, responsible, and compassionate means of resolving interpersonal tensions. The intention to attend to and learn from our oversights or to "learn from our experiences" is a clear application of practice concerning principles of restorative justice.

Accordingly, if our institutions or leaders thereof become unable (or perhaps unwilling) to appropriately administer the proper recognition or proper implementations of restorative procedures, then perhaps such "mechanisms" ought to be humanely intervened in order to prevent further harm to those affected (as such measures would be legitimate). Perhaps through other alternative forms of mediation or facilitation of sorts in order to probe further on specific issues submitted by members of the community. Because while particular situations or "hard cases" may indeed harbor certain elements of interpersonal conflict, such processes or leaders may not be effective in resolving those issues - if such resolution is desired or recommended in order to properly balance redistributions of power.

5. Further Thoughts on Restorative Justice

In many countries, dissatisfaction and frustration with the formal justice system have led to a growing advocacy for alternative responses regarding the resolution of social injustices and/or violations of our basic human rights. As those affected by injustice and violation of rights may continue to not "take part in" or further contribute to our institutions' processes regardless of the potentially negative implications which may come about. Reasons may include no longer wanting to confront the transgressor, or believing that the justice system will not work to improve things therefore being further victimized by our institutions. Prescriptively, such alternative measures may provide feasible measures of pragmatic resolution for those affected (as well as the surrounding community) in order to provide both closure and fruitful progression. Such alternative measures of agency are based on the belief that restorative justice must indispensably capacitate optimal representation and mediation to its most possible extent. But most importantly, such alternative are also based on a will to return to local decision-making and community building that promote inclusiveness and respect for diversity. Through this understanding, the participation of those who have suffered through such injustices or violations of their human rights become meaningful because they provide those affected with an opportunity to participate in collective actions that prevent further injustice or violations.

Some may skeptically contend that the inclusion of "every victim" in the justice processes have created more punitive than restorative policies of justice. But while such deliberation continues, it should be recognized in our institutions that systems of justice acknowledge a basic role for all its persons, particular groups and collective citizens in the procedural process.

Accordingly, crucial to this examination is an understanding of why those who have suffered continuous forms of injustice matter. While we are still acquiring further representation and consensus, the long-term impact of injustice of particular persons or groups continue to enroot negative impacts and perceptions of the State, its leaders, their community - and more importantly, what the future may hold for continued injustices and violations. Because for all intents and purposes, our systems of justice are indeed dependent upon the cooperation and participation of its collective citizens.

6. The Ratio Politica of Native Hawaiians and the State

New and established forms of restorative justice offer communities some means of resolving conflicts by balancing the needs of the community. But conjunctively, restorative processes are being used to address and resolve conflict in a variety of other contexts and settings, these processes are particularly adapted to situations where the parties participate voluntarily and each one has a capacity to engage fully and safely in a process of dialogue and negotiation. To this understanding, reformative actions concerning law's establishment worked to end the era of injustice in Hawaii's history; concurrently, such measures also worked to corroborate truthful paradigms and templates that protect the rights and recognition of an indigenous people in order to ensure their future. Respectively in the recent past, State leaders, the Office of Hawaiian Affairs as well as other collective groups stood in unification to combat self-interest private investors, defend admissions policies, and halt military weapons testing. In the recent past, such leaders stood in unity to preserve Hawaii's natural resources, ancient gravesites and culturally sacred temples; such leaders in the recent past also stood in unification to ensure the perpetuation and sustainment of its newly established institutions such as the Office of Hawaiian Affairs. In circumspect, such leaders developed and defended law's fidelity and institutions because they believed their purpose to be valid and true.

It must be defended that steps toward recognition and conflict resolution are necessary for their long-term effects that not only promote social cohesiveness through a restorative process, but promote inter-generational equality and equity as well. To negate such procedural steps in order to further short-term economic yield ultimately undermines, manipulates and outright falsifies the ethos of restorative justice in and of itself, as well as in and for itself. Through such circumstances, restorative justice becomes crucial because it represents the majority's promise to a particular group that dignity and equality will be respected and carried out as such; if restorative law is to work, it must be the sincere and carried out with integrity; if the government does not take fidelity to recognition or conflict resolution seriously, than it does not take lawmaking or the principles of restorative justice seriously.

We must demand the further actions necessary to affirm that law's interpretation, establishment and fidelity be judiciously and consistently carried out within its assertions and functions. With respect to Native Hawaiians, the violations and breaches of law's interpretation clearly shows that "recognition" through an apology is not enough. While the issues of this case are of a deep and profound nature concerning the unjust acts that Native Hawaiians have endured, or solutions are of a complex nature - more must be done. While much to the integrity and character of the collective leaders who not only urged congress to "further support reconciliation efforts between the United States and the Native Hawaiian people," but to further elaborate the "proper foundation for reconciliation between the United States and the Native Hawaiian people...;" however, the case presented has demonstrated that apologetic recognition does not sufficiently avail the proper insurance of protection or resolve needed for Native Hawaiians. Thus, restorative justice for Native Hawaiians must be furthered in order to ensure that such manipulations and breaches of value, content, fidelity and respect no longer continue. Additionally, those who wantonly choose to violate such established values and content of laws enacted should be made accountable through their removal of office and if possible - legal charges brought to suit thus ensuring the complimentary principle of responsibility for one's misdirected actions. Upon insisting and requiring law's representation conveys the message that law's institution and its fidelity to purpose is crucial because embodies a commitment that human dignity and equality will be respected. It communicates the idea that political equality will assert and defend those historically ignored and silenced; it communicates the indispensability of law's fidelity and purpose in order to protect the dignity and standing of those who need to be defended as all individuals and particular groups are equally entitled to concern, respect, value and content. But most importantly, it is only in our continued unification and commonality of purpose that we continue to initiate and take further actions in order to defend, maintain, and preserve the values, good-faith and trust building that each of us have worked so hard to mindfully establish; we must the interpretation, establishment and fidelity of restorative justice (as well as recognition) in order to preserve what is just and most importantly, do what is just. Mahalo.

7. Post-Script

The land was excluded from Native Hawaiian trust and sold. To some prescription, in 2009 (month unknown), Act 176 became law making alienation of ceded lands "extremely difficult for the state to sell ceded lands. While Act 176 is not as all inclusive as a full moratorium, it nonetheless provides a high bar for the sale of any ceded lands."^{iv}

On July 15, 2009, upon the passing of Act 176, the Office of Hawaiian Affairs, three individual Native Hawaiian Plaintiffs, and the State of Hawaii jointly filed a motion to dismiss the case. However, one (and the only) plaintiff, Jonathan Kamakawiwo'ole Osorio did not join the motion to dismiss the case.

Moreover, while the Office of Hawaiian Affairs filed the case be dismissed without prejudice, the State of Hawaii (as represented by Hawaii's state attorney General Mark Bennett) file of a Motion to Dismiss that went much further:

- Asserting that Osorio "does not have standing because he is not a Native Hawaiian as defined by the term is used in § 5(f) of the Admission Act and Art. XII, § 4 of the Hawaii Constitution."^v

- Asserted that historical documents written in 1898 (the year of Hawaii's non-consensual annexation) gave "all of our lands to the United States."^{xvi}
- Asserting that "this court's recognition of [Osorio]'s 'standing' would effectively create a new class of individuals who are entitled to litigate [section] 5(f) on behalf of native Hawaiian trust beneficiaries in contravention of this court's established standing doctrine."^{xvii}

Through this, Osorio was required to provide proof of his Native Hawaiian ancestry in order to maintain his right to further pursue the case thus transitioning recognition, principles of restorative justice into an outright issue of race. In following this transition of subject - Office of Hawaiian Affairs Board of Trustee Rowena Akana went on to state: "The State and Osorio have made very negative statements against each other in the media. OHA has not been involved in the "name-calling" other than refuting Osorio's accusation that OHA breached its fiduciary duty. OHA's continuing position is to dismiss the case without prejudice... The danger in Professor Osorio continuing this case is the possibility that the Hawaii Supreme Court might rule that he has no standing to pursue this case because he does not have a 50% native Hawaiian blood quantum. This would seriously damage all of the progress that has been made to establish that there is no difference in a 50% blood quantum Hawaiian and those of us with less than 50%."^{xviii}

This essay is dedicated to all those affected. Mahalo Nui Loa.

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ⁱⁱS.J.Res.19 - A joint resolution proposing an amendment to the Constitution of the United States relating to contributions and expenditures intended to affect elections. (1/1993). (<http://beta.congress.gov/bill/113th-congress/senate-joint-resolution/19/text?q=%7B%22search%22%3A%5B%22s.j+res+19%22%5D%7D>)

ⁱⁱⁱThe Apology Bill," <http://www.hawaii-nation.org/apologybill> (viewed 3/2007)

^{iv}*U.S. Public Law 103-150 (107 Stat. 1510)*

^v*Ibid. U.S. Public Law 103-150 (107 Stat. 1510)*

^{vi}*Ibid. U.S. Public Law 103-150 (107 Stat. 1510)*

^{vii}*Ibid. U.S. Public Law 103-150 (107 Stat. 1510)*

^{viii}HAWAII ET AL. v. OFFICE OF HAWAIIAN AFFAIRS ET AL. CERTIORARI TO THE SUPREME COURT OF HAWAII (No. 07–1372. Argued February 25, 2009—Decided March 31, 2009). <http://www.supremecourt.gov/opinions/08pdf/07-1372.pdf>

^{ix}In 1959, The Hawaii Admission Act under Section 5, clause F - details the terms of Hawaii's entry into the Union, requiring that all ceded land is held in trust to be used exclusively for the benefit of Native Hawaiians by establishing and supporting public schools and the promotion of homestead homeownership. *U.S. Public Law 103-150 (107 Stat. 1510)*

^xFundamentally, because the Kingdom of Hawaii was non-consensually overthrown, non-consensually appointed a President (Sanford B. Dole) non-consensually annexed as a territory which ultimately makes Statehood a non-consensual act.

^{xixi}<http://www.rowenaakana.org/tag/leialii/> (viewed 5/13/2014)

^{xiii}In 1959, The Hawaii Admission Act under Section 5, clause F - details the terms of Hawaii's entry into the Union, requiring that all ceded land is held in trust to be used exclusively for the benefit of Native Hawaiians by establishing and supporting public schools and the promotion of homestead homeownership. *U.S. Public Law 103-150 (107 Stat. 1510)*

^{xiii}Again, because the Kingdom of Hawaii was non-consensually overthrown, non-consensually appointed a President (Sanford B. Dole) non-consensually annexed as a territory which ultimately makes Statehood a non-consensual act.

^{xiv}[wenaakana.org/tag/leialii/](http://www.wenaakana.org/tag/leialii/) (viewed 5/13/2014)

^{xv}

<http://www.leagle.com/decision/In%20HACO%2020091028244.xml/OFFICE%20OF%20HAWAIIAN%20AFFAIRS%20v.%20HCDCH>

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